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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,524	03/14/2001	David Harold Berry	CSA 2 0114	4510

7590 09/20/2002

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EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/808,524

Applicant(s)

BERRY ET AL.

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

Claims 16-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The intended limitations of the first and second dimensions are unclear particularly with regard to movement through a second dimension less than a first dimension since there is no common reference to the dimensions.

***Claim Rejections - 35 USC § 102***

Claims 1, 3, 4, 8-12 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Caldwell. Caldwell discloses a fastening peg (10) comprising a conical piercing point (32), a helical flange (36) spiraling radially and circumferentially from the point, a shoulder (40) axially spaced from the flange and, locking assembly (48). The helical flange terminated in a radial edge and as can be seen in Fig. 3, is spaced 360° from where the helical flange begins at the point. Caldwell further teaches a method of piercing and rotating to advance the fastener into the opening and then axially securing the fastener to an opening (28). In regards to claims 1 and 11, the combination of the fastener and the weatherseal and vehicle are merely and intended use of which the device of Caldwell would be capable but, it should be noted that in Caldwell member 12 could broadly be read as a "weatherseal" and opening 18 could broadly be read as an opening in a vehicle.

***Claim Rejections - 35 USC § 103***

Claims 2, 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell as applied to claims 1, 4, 11 and 12 above, and further in view of Schmidt. Schmidt teaches a threaded fastener wherein the threads begin at a location spaced from the point and to provide a thread to a pointed nose (Fig. 15). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the pointed nose of Caldwell space the beginning of the helical flange from the point and to provide the nose with the a thread as taught in Schmid in order to facilitate the piercing of the substrate as disclosed therein.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell as applied to claim 11 above, and further in view of Mayers. Mayers discloses to provide a locking assembly with locking arms (20). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to locking assembly of Caldwell with locking arms as disclosed in Mayers such that it would be easier to fit the locking assembly into an opening.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell. In regards to the first and second rotational velocities, the fastener of Caldwell would first be rotated at a faster velocity since there would initially be less resistance as the fastener is first inserted into the substrate.

### ***Response to Arguments***

Applicant argues that in Caldwell the dimension between the flange and shoulder is less than that of a carpet layer and as such would compress the carpet layer which is contrary to applicant's invention. In applicant's invention, the fastener is for a weatherseal and should not compress the seal. In response, the examiner agrees however, the claims are directed to a fastener and the combination with the weatherseal is merely an intended use and; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

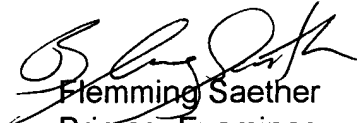
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.



Flemming Saether  
Primary Examiner  
Art Unit 3627

September 20, 2002